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"OR THE WORK THEREON OTHERWISE TERMINATED."

Attorneys who are familiar with our mechanics' lien statutes will recognize at once that the titular words are taken from section 2476 of the Code, relative to the perfection of such liens, and that their purpose is to define the condition, short of completion, which may mark the beginning of the period of limitation within which a claim of lien may be filed.

When the building, the erection of which gives origin to the claim of lien, has been brought to completion, or has been accepted as complete by the owner before that stage has been reached, usually the beginning of the period of limitation requires only brief inquiry, but when the work on the building has been abandoned or discontinued, and the building stands uncompleted, the determination of the time when the period begins to run, not only is frequently an object of careful inquiry and thought, but also may involve extra hazard, since the premature filing of a lien claim may give rise to an action for damages (*Moore* v. *Rolin,* 89 Va. 107). The inquiry of primary importance in such case is: What meaning does the legislature intend to be given to the words, "or the work thereon otherwise terminated?" What is the condition, less than completion, that will start the running of the period of limitation? What are the characteristics by which such condition may be reasonably identified? It appears safe to assume that the legislature intends a condition, ascertainable by reasonable effort, that will operate fairly for the equal protection of all parties concerned. With this assumption borne in mind, and with the aid of a familiar rule of construction, the rule of *ejusdem generis,* applied in the light of a construction heretofore given to the words by the legislature itself in a former statute, definition of the condition and its characteristics may not be so difficult or remote.

Since the Code of 1873, which contained the law in the form

under which the case of *Merchants Bank* v. *Dashiell* (25 Gratt. 616) was decided, the section relating to the perfection of the lien—now section 2476 of the Code—has been amended seven times (1874-75, Ch. 351; 1878-79, Ch. 58; 1879-80, Ch. 54; 1883-84, Ch. 456; Code 1887; 1895-96, Ch. 827; 1897-98, Ch. 451). The law as it appeared in the Code of 1873, and in the amendatory acts of 1878-79 and 1883-84, measured the period of limitation from the completion of the work, or the building, etc.; the amendment of 1874-75 inserted after "completion of the work" the words, "or after he shall have been compelled, by the action of the owner, to abandon the work," but this insertion was deleted from this section by the act of 1878-79, and nothing was substituted in its place until the Code of 1887 was adopted; the Code of 1887 inserted the words, "or the work thereon otherwise terminated," in this section for the first time, making the period of limitation run "from the time such building * * * is completed, or the work thereon otherwise terminated;" and since the date when the Code of 1887 went into effect, except during the period of two years controlled by the Act of 1895-96, which fixed the period of limitation "from time such building * * * is completed, or the work thereon otherwise terminated, and from the time such labor is last performed or materials furnished," the time from which the period of limitation is to be measured has been, and is now, the same as in that Code.

Under the law as it read in 1871 (Code 1873, Ch. CXV., Sec. 4) the Court of Appeals decided at its December Term, 1874, in the case of *Merchants Bank* v. *Dashiell*—a case in which the building was not completed and the lien claims probably were not filed within thirty days after abandonment of the work,—that, the completion of the building having been prevented by the default of the owner, the liens of the contractors were valid, and superior to the lien of a deed of trust created after the work on the building had been commenced, whether or not the lien claims required for perfection of the liens in the case of a completed building were filed or not. The legislature, which was then in session, doubtless conceiving that the filing of lien claims should be required in all cases, amended the statute so as

to make it the duty of the contractor to file his lien claim in the situation which the court had said dispensed with the necessity of such filing, by making it read as follows:

> "A general contractor, or a sub-contractor, or person contracting to furnish materials about a building or other improvement, for a general contractor, or other person than the owner, * * * shall file, within thirty days after the completion of the work, *or after he shall have been compelled, by the action of the owner, to abandon the work,* in the clerk's office * * * a true account, etc."

It will be observed that this amendment met the defect in the statute, if it was a defect, disclosed by the opinion of the court, but went no further.

It is in this act of 1874-75, in which the words, "or the work thereon otherwise terminated," appear for the first time in our mechanics' lien statutes, that the above mentioned legislative construction of the words occurs. After amending section 4 of the Code of 1873 in the language above set out, the act proceeds to amend section 5 thereof, the section that was the predecessor of our present section 2479, relative to fastening personal liability on the owner, so as to read as follows:

"Any sub-contractor, or any person contracting to furnish materials, about a building or other improvements, for a general contractor, or other person than the owner, may give notice in writing to the owner of such building or other improvements, stating the value of the labor performed or materials furnished, and shall, within twenty days after such building or other improvement is completed, *or the work thereon otherwise terminated,* furnish the owner thereof with an affidavit showing a correct account, etc."

If it be considered that the purpose of section 4 (Sec. 2476) is to prescribe the time and method of perfecting the lien in behalf of general contractors, sub-contractors and persons furnishing materials for a general contractor, or other person than the owner, while the purpose of section 5 (Sec. 2479) is to provide a method by which, and to prescribe the time when, the same persons, except the general contractor, may acquire by their own acts the additional protection of the personal liability

of the owner, which the general contractor has by virtue of contractual relations, does it not become evident that by the two sections, taken together, the legislature intends to place general contractors, sub-contractors and material men upon the same footing and give to them all alike the same kind and measure of protection? If the answer be affirmative, then it may be regarded as a legal certainty that the legislature intended the words "or the work thereon otherwise terminated," as used in section 5, to be construed as being the equivalent of the words, "or after he shall have been compelled, by the action of the owner, to abandon the work," as used in section 4, and it may be deemed a safe conclusion that section 2476 of our present Code has the same, or a very nearly equivalent meaning, as if it read:

> "A general contractor * * * shall at any time after the work is done and the materials furnished by him and before the expiration of sixty days from the time such building * * * is completed, or from the time he shall have been compelled, by the action of the owner, to abandon the work, file in the clerk's office * * * an account showing, etc."

This conclusion is strengthened by the fact that, although the words, "or after he shall have been compelled, by the action of the owner, to abandon the work," inserted in section 4 by the act of 1874-75, subsequently were stricken out, the words, "or the work thereon otherwise terminated," inserted in section 5 by the same act, have been retained in the latter section and its successor, section 2479, and by the further fact that, when the revisors of the Code of 1887 deemed it proper to make the beginning of the period within which the lien may be perfected identical with that of the period allowed for perfection of the claim upon the personal liability of the owner, they chose the same words that were already in section 5, probably because of the previous legislative interpretation of them.

In case this method of reasoning be not entirely convincing, let us see whether application of the rule of *ejusdem generis* to the construction of section 2476, as it now reads, will lead to

substantially the same conclusion. This rule, which is altogether a rule of construction, is generally stated about as follows:

> "By the rule of construction known as *ejusdem generis,* where general words follow the enumeration of particular classes of persons and things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated." 36 Cyc. p. 1119.

In the realm of science the classification of a species is determined by its possession of the essential characteristics of the genus, and a species is classed in a certain genus because it has the essential characteristics of that genus. The rule of construction known as *ejusdem generis* reverses, as it were, this process, and requires that the scope of the genus (the general words) be confined to the limitations of the species (the particular classes of persons or things). Within the purpose and scope of the mechanics' lien law, *completion* is the *species* of which *termination* is the *genus,* and the limitations of the genus, termination, are to be deduced from, and be confined to the essential characteristics of the species, completion. The essential characteristic of completion is attainment of an end, perfected in accordance with preconceived intention,—the visible condition of a finished entity, brought to the designed end by accomplishment of that which is necessary to perfection of the entity,—in which, arising from the condition itself, notice of both the intention to end and the fact of end is inherent, while in the unlimited generic conception of termination, that is, end without regard to intention and without reference to perfection, there is no notice of either the fact of end or intention to end. Completion is a fact accomplished, which of itself gives adequate notice; termination, in the broad generic sense, may or may not be a fact accomplished, according to the intention of the controlling mind. In completion, which is the consummation of intention, the intention is manifest from the fact without other notice; while a mere cessation, for however long a period, contains no element of notice of an actual end, and the fact of end can be known only from an expression of intention, or be deduced from circumstances equivalent to such expression.

That the necessity of actual or constructive notice of an intention to terminate is inherent in the spirit of the statute is shown by the reasoning in the case of *Merchants Bank* v. *Dashiell,* in which Judge Christian, who rendered the opinion of the court, stresses, as a reason for relieving the contractors from the necessity of filing lien claims, the adequacy of the notice of the existence of the lien that lay in the uncompleted condition of the building. It is true that Judge Christian here states the aspect of the rule of notice that relates to the notice to which the public is entitled, but, since the rights of all parties (owner, contractor and public), are each in derogation and restriction of the rights of the others, it is clear that the rule of notice is mutual and reciprocal, and the holding of that case that there can be no loss of the lien, if the building is not completed by reason of the default of the owner, is equally as applicable to the present statute as it was to the original statute, with this single difference that, whereas under the original statute, the period within which the lien legally could be perfected ran from a time fixed by an event (completion) which in itself, without any other act on the part of any one, manifests the three essentials of fact, intention and notice, under the present statute the period of limitation runs from a time fixed by the same event or by an alternative event that must be similar, or that must be made similar by acts of the parties, unless there be attributed to the legislature a purpose to give to the contractor a right and, at the same time, to the owner a power to annul that right, to

> "* * * keep the word of promise to our ear,
> And break it to our hope."

In order to be similar, since mere termination is composed of only the two elements of end and intention, which are not manifest of themselves, justice requires that the alternative event—the termination contemplated by the statute—shall be of such nature as to contain also the third element of similarity, namely, notice of intention. Not only must both fact and intention concur to constitute termination, but, in order that the termination may be of the same nature or class with completion, they must be accompanied by notice of their existence. Therefore the rule

laid down by Judge Christian that, "If the work is not completed by default of the owner, there can be no loss of the lien by that default," is changed by the amendment only so far as to make it read as follows:

> "If the work is not completed by default of the owner, there can be no loss of the lien by that default, unless the contractor has actual or constructive notice of the intention of the owner to end the work otherwise than by completion, and the period of limitation will run only from the time of such notice."

Again Judge Christian says:

> "It is plain, from the whole scope and object of the act, that the mechanics' lien would attach to the building and the ground upon which it was in process of erection; and the owner could not deprive the contractors of the lien which the law gives, upon the ground that the notice of the lien had not been recorded within thirty days after the completion, when, in point of fact, the completion of the building had been prevented by the owner himself. This would be to allow a party to take advantage of his own wrong, and to offer a premium for the violation of contracts."

From the reasoning of that case and the principles enunciated, and from the construction placed upon the same words by the legislature, it seems to be clear that the words, "or the work thereon otherwise terminated," are to be construed to mean a termination that is intentional on the part of the owner, accompanied by actual notice of such intention, or a termination in such manner and circumstances as constitute constructive notice of an intention to terminate. In other words, termination, within the meaning of the statute, must be of such character and in such circumstances as to approximate completion in respect to its three essential elements of end, intention to end, and notice of such intention. Otherwise, since a contractor, without notice of an intention to "otherwise terminate" the work, cannot know whether a discontinuance of work is to be temporary or permanent, the duty of filing a lien claim, with its consequences of expense to himself, discredit to the owner, and possible liability to an action for damages, would be imposed upon him by every suspension of work that might continue for sixty

days or more. This alone is sufficient to convince of the purpose of the legislature to use the words "otherwise terminated" in a sense embracing fact, intention and notice, a conviction that becomes certainty, when it is considered that the effect of any other construction is to ascribe to the legislature a purpose to permit the owner to annul without notice the lien it has given to the mechanic, or in the words of Judge Christian, "to allow a party to take advantage of his own wrong, and to offer a premium for the violation of contracts."

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